

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Petitioner,

vs.

RICHARD GROTE,

Respondent.

No. 17-CV-3087-LRR

ORDER

I. INTRODUCTION

The matter before the court is United States Magistrate Judge Kelly K.E. Mahoney's Report and Recommendation (docket no. 13).

II. RELEVANT PROCEDURAL HISTORY

On October 16, 2017, the government filed a "Petition to Enforce Internal Revenue Service Summons" ("Petition") (docket no. 1). On October 19, 2017, the court referred this case to Judge Mahoney. *See* October 19, 2017 Order (docket no. 2). On November 28, 2017, Judge Mahoney held a hearing on the Motion for Order of Compliance (docket no. 5). *See* November 28, 2017 Minute Entry (docket no. 7). Respondent failed to appear. *Id.*; *see also* October 26, 2017 Return of Service (docket no. 4). Judge Mahoney entered an order directing Respondent to comply with the IRS summons and provided that, if Respondent failed to comply, he must appear for a show cause hearing. *See* November 28, 2017 Order (docket no. 8).

On January 24, 2018, the government filed a Motion for Order and Status Report (docket no. 10), informing the court that "[R]espondent failed to comply with the summons or make any known effort to contact the IRS or the United States Attorney's Office." Motion for Order and Status Report at 1-2. The government requested that the court "enter an order (1) finding [R]espondent in civil contempt[;] (2) directing [R]espondent to

comply with the IRS summons[;] (3) imposing a monetary fine of \$25 [per] day, payable to the [C]lerk of [C]ourt, for any continued failure to comply with the IRS summons[;] and (4) setting a status hearing for the purpose of . . . considering the imposition of additional sanctions.” *Id.* at 2. On January 30, 2018, Judge Mahoney held a show cause hearing. *See* January 30, 2018 Minute Entry (docket no. 12). Respondent again failed to appear. *Id.*; *see also* December 2, 2017 Return of Service (docket no. 9). On February 1, 2018, Judge Mahoney issued the Report and Recommendation, which recommends that the court “enter an order: (1) compelling [Respondent] to comply with the IRS summons within [thirty] days from the date he is served the court’s order; (2) ordering [Respondent] [to] pay the costs for [the government] to maintain this action, including costs of service; and (3) ordering [the government] to file a status report no later than [sixty] days from the date of the court’s order, indicating whether [Respondent] complied with the subpoena.” Report and Recommendation at 3. Judge Mahoney further recommended that, “should [Respondent] fail to comply with the order compelling compliance with the IRS summons, that the court order [him] to show cause why he should not be held in contempt and be subjected to imposition of fines and/or incarceration.” *Id.* The Report and Recommendation states that “[o]bjections to th[e] Report and Recommendation must be filed within fourteen days of service.” *Id.*

III. STANDARD OF REVIEW

Pursuant to statute, this court’s standard of review for a magistrate judge’s report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for de novo review of a magistrate judge’s report and recommendation on dispositive motions

when objections are made. Fed. R. Civ. P. 72(b)(3). The Eighth Circuit Court of Appeals has held that it is reversible error for a district court to fail to conduct a de novo review of a magistrate judge's report and recommendation when such review is required. *See, e.g., United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003). The court reviews the unobjected-to portions of the proposed findings or recommendation for "plain error." *See United States v. Rodriguez*, 484 F.3d 1006, 1010-11 (8th Cir. 2007) (noting that, where a party does not file objections to a magistrate's report and recommendation, the party waives the right to de novo review and the court will review the decision for plain error).

IV. ANALYSIS


In this case, no objections have been filed and the time to object to the Report and Recommendation has passed. It appears to the court upon review of Judge Mahoney's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Mahoney's Report and Recommendation of February 1, 2018.

In light of the foregoing **IT IS HEREBY ORDERED**,

- (1) The Report and Recommendation (docket no. 13) is **ADOPTED**;
- (2) The Motion for Order and Status Report (docket no. 10) is **GRANTED IN PART** and **DENIED IN PART**;
- (3) Respondent is **ORDERED** to produce to the United States the required financial records as set forth in the IRS summons dated January 23, 2017, within thirty days from the date he is served with the court's order;
- (4) The government is **DIRECTED** to serve Respondent with this Order and file a status report indicating whether Respondent has complied no later than sixty days after this Order is entered; and
- (5) In the event that Respondent fails to comply with this Order, the court shall set this matter for a status hearing by separate order.

IT IS SO ORDERED.

DATED this 23rd day of March, 2018.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA